Fiscal Note 2011 Biennium

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Bill #	SB0036		**Title:**	Revise waters edge provisions of corporation taxes
Primary Sponsor:	Erickson, Ron		**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☐ Needs to be included in HB 2
- ☐ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$2,400,000	$2,400,000	$2,400,000	$2,400,000
Net Impact-General Fund Balance	$2,400,000	$2,400,000	$2,400,000	$2,400,000

Description of fiscal impact:
This bill changes the apportionment of income for members of a group of related corporations that have elected to have income apportioned to Montana based on its United States income rather than its worldwide income. Also the list of countries considered tax havens is updated. These changes are expected to increase corporate license tax revenue to the general fund by $2.4 million per year.

FISCAL ANALYSIS

Assumptions:
1. Montana requires corporations that have common ownership and that are part of a common line of business to file a combined report. The income of members of such a combined or "unitary" group is apportioned to Montana based on income and apportionment factors of the group. This makes the income apportioned to Montana independent of financial arrangements between group members, such as ownership relationships between companies or units or the pricing of inter-company sales.
2. The normal corporate license tax rate is 6.75%. This rate is applied to the share of a corporation's worldwide income that is apportioned to Montana and its Montana source income. A corporation has the option to have only its United States income included in the apportionment process but then pays a higher rate of 7%.
3. This is called a "water's edge election". When a corporation that is part of a unitary group makes a water's edge election, some of its foreign affiliates may be excluded from the apportionment process.

4. The proposed bill clarifies when an entity can rescind its water's edge election.
5. This bill makes several changes to the tests for whether a foreign affiliate is included in the apportionment process of a member of a unitary group that has made a water's edge election:
    a. Under current law, domestically incorporated affiliates are excluded from the combined reporting requirement if less than 20% of their payroll and property is in the United States. This bill eliminates the exclusion.
    b. Under current law, a subsidiary incorporated in another country must be included if more than 20% of its property and payroll is in the United States. For a foreign-owned corporation, this bill includes subsidiaries of the foreign parent corporation that meet the 20% property and payroll test.
    c. If a member of a water's edge affiliated group earns more than 20% of its income from selling services or intangibles to other members of the group, this bill would include the income and apportionment factors from those sales of services and intangibles.
    d. Under current law, any member of an affiliated group that is incorporated in a tax haven must be included in the combined report. This bill adds five countries and removes two countries to the list of tax havens.
6. The Department of Revenue (DOR) recalculated the taxes for the largest corporations with a water's-edge election over a four year period as if the changes had been in place. Estimated tax liability with the provisions of this bill averaged $2.4 million higher. The actual results could be above or below $2.4 million for the following reasons:
    a. Returns from the period covered by the recalculation of taxes did not provide information on the income and apportionment factors of some affiliates that would be included under this bill. Assuming that these corporations continued their water's edge elections, the increase in revenue would be more than $2.4 million per year.
    b. Corporations make the water's-edge election in order to reduce their liability. If the provisions of this bill were in place, some corporations may chose to rescind their election. The increase in tax liability for such a corporation may be less than the amount found from recalculating its average tax liability over a period.
7. This bill is not expected to affect DOR costs of administering the tax.
8. This legislation applies retroactively to tax years beginning after December 31, 2008 and is effective upon passage and approval.

	FY 2010 Difference	**FY 2011 Difference**	**FY 2012 Difference**	**FY 2013 Difference**
Fiscal Impact:				
Revenues:				
General Fund (01)	$2,400,000	$2,400,000	$2,400,000	$2,400,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	$2,400,000	$2,400,000	$2,400,000	$2,400,000

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

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